

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JUSTIN MONTGOMERY, individually) Case No.

and on behalf of all others similarly)

situated,) **CLASS ACTION**

Plaintiff,) **COMPLAINT FOR VIOLATIONS**
) **OF:**

VS.

RESORTSTAY INTERNATIONAL,
LLC,

Defendant.

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]
2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]

DEMAND FOR JURY TRIAL

Plaintiff Justin Montgomery (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Resortstay International, LLC (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a company with its principal place of business and State of Incorporation in the state of Nevada. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Central District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a) because Defendant does business within the state of California and Plaintiff resides within the county of Orange.

PARTIES

4. Plaintiff, Justin Montgomery (“Plaintiff”), is a natural person residing in Huntington Beach, California and is a “person” as defined by 47 U.S.C. § 153 (10).

5. Defendant, Resortstay International, LLC (“Defendant”), is a company that offers discounted vacations and is a “person” as defined by 47

1 *U.S.C. § 153 (10).*

2 **FACTUAL ALLEGATIONS**

3 6. Beginning in or around October 20, 2014, Defendant contacted
4 Plaintiff on his cellular telephone number ending in 2108, in an attempt to solicit
5 Plaintiff into attending Defendant's presentation and therefore potentially receive
6 a discounted vacation.

7 7. Defendant contacted or attempted to contact Plaintiff from telephone
8 number (702)749-3838.

9 8. Furthermore, Defendant used an "automatic telephone dialing
10 system", as defined by *47 U.S.C. § 227(a)(1)* to place its call to Plaintiff seeking
11 to solicit its services.

12 9. Defendant's calls constituted calls that were not for emergency
13 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

14 10. Defendant's calls were placed to telephone number assigned to a
15 cellular telephone service for which Plaintiff incurs a charge for incoming calls
16 pursuant to *47 U.S.C. § 227(b)(1)*.

17 11. Defendant, during all relevant times, did not have Plaintiff's "prior
18 express consent" to receive calls using an automatic telephone dialing system or
19 an artificial or prerecorded voice on her cellular telephone pursuant to *47 U.S.C. §*
20 *227(b)(1)(A)*.

21 **CLASS ALLEGATIONS**

22 12. Plaintiff brings this action individually and on behalf of all others
23 similarly situated, as a member of the proposed class (hereafter "The Class")
24 defined as follows:

25 All persons within the United States who received any
26 solicitation/telemarketing telephone calls from
27 Defendant to said person's cellular telephone made
28 through the use of any automatic telephone dialing
system or an artificial or prerecorded voice and such

1 person had not previously consented to receiving such
2 calls within the four years prior to the filing of this
3 Complaint

4 13. Plaintiff represents, and is a member of, The Class, consisting of All
5 persons within the United States who received any collection telephone calls from
6 Defendant to said person's cellular telephone made through the use of any
7 automatic telephone dialing system or an artificial or prerecorded voice and such
8 person had not previously not provided their cellular telephone number to
9 Defendant within the four years prior to the filing of this Complaint.

10 14. Defendant, its employees and agents are excluded from The Class.
11 Plaintiff does not know the number of members in The Class, but believes the
12 Class members number in the thousands, if not more. Thus, this matter should be
13 certified as a Class Action to assist in the expeditious litigation of the matter.

14 15. The Class is so numerous that the individual joinder of all of its
15 members is impractical. While the exact number and identities of The Class
16 members are unknown to Plaintiff at this time and can only be ascertained
17 through appropriate discovery, Plaintiff is informed and believes and thereon
18 alleges that The Class includes thousands of members. Plaintiff alleges that The
19 Class members may be ascertained by the records maintained by Defendant.

20 16. Plaintiff and members of The Class were harmed by the acts of
21 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
22 and Class members via their cellular telephones thereby causing Plaintiff and
23 Class members to incur certain charges or reduced telephone time for which
24 Plaintiff and Class members had previously paid by having to retrieve or
25 administer messages left by Defendant during those illegal calls, and invading the
26 privacy of said Plaintiff and Class members.

27 17. Common questions of fact and law exist as to all members of The
28 Class which predominate over any questions affecting only individual members

1 of The Class. These common legal and factual questions, which do not vary
2 between Class members, and which may be determined without reference to the
3 individual circumstances of any Class members, include, but are not limited to,
4 the following:

- 5 a. Whether, within the four years prior to the filing of this
6 Complaint, Defendant made any telemarketing/solicitation call
7 (other than a call made for emergency purposes or made with
8 the prior express consent of the called party) to a Class
9 member using any automatic telephone dialing system or any
10 artificial or prerecorded voice to any telephone number
11 assigned to a cellular telephone service;
- 12 b. Whether Plaintiff and the Class members were damages
13 thereby, and the extent of damages for such violation; and
- 14 c. Whether Defendant should be enjoined from engaging in such
15 conduct in the future.

16 18. As a person that received numerous telemarketing/solicitation calls
17 from Defendant using an automatic telephone dialing system or an artificial or
18 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
19 claims that are typical of The Class.

20 19. Plaintiff will fairly and adequately protect the interests of the
21 members of The Class. Plaintiff has retained attorneys experienced in the
22 prosecution of class actions.

23 20. A class action is superior to other available methods of fair and
24 efficient adjudication of this controversy, since individual litigation of the claims
25 of all Class members is impracticable. Even if every Class member could afford
26 individual litigation, the court system could not. It would be unduly burdensome
27 to the courts in which individual litigation of numerous issues would proceed.
28 Individualized litigation would also present the potential for varying, inconsistent,

1 or contradictory judgments and would magnify the delay and expense to all
 2 parties and to the court system resulting from multiple trials of the same complex
 3 factual issues. By contrast, the conduct of this action as a class action presents
 4 fewer management difficulties, conserves the resources of the parties and of the
 5 court system, and protects the rights of each Class member.

6 21. The prosecution of separate actions by individual Class members
 7 would create a risk of adjudications with respect to them that would, as a practical
 8 matter, be dispositive of the interests of the other Class members not parties to
 9 such adjudications or that would substantially impair or impede the ability of such
 10 non-party Class members to protect their interests.

11 22. Defendant has acted or refused to act in respects generally applicable
 12 to The Class, thereby making appropriate final and injunctive relief with regard to
 13 the members of the California Class as a whole.

14 **FIRST CAUSE OF ACTION**

15 **Negligent Violations of the Telephone Consumer Protection Act**

16 **47 U.S.C. §227 et seq.**

17 23. Plaintiff repeats and incorporates by reference into this cause of
 18 action the allegations set forth above at Paragraphs 1-22.

19 24. The foregoing acts and omissions of Defendant constitute numerous
 20 and multiple negligent violations of the TCPA, including but not limited to each
 21 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

22 25. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*
 23 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in
 24 statutory damages, for each and every violation, pursuant to *47 U.S.C. §*
 25 *227(b)(3)(B).*

26 26. Plaintiff and the Class members are also entitled to and seek
 27 injunctive relief prohibiting such conduct in the future.

28 **SECOND CAUSE OF ACTION**

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

27. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-26.

28. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

29. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

30. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

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SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection
Act**

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 27th Day of January, 2015.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff